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EXAMINER

RAHMAN, MOHAMMAD L

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONATHAN J. OLIVER, SCOTT ROY, SCOTT D.
EIKENBERRY, BYRAN KIM, DAVID A. KOBLAS, and
BRIAN K. WILSON

Appeal 2009-007927
Application 10/650,487
Technology Center 2400

Before JOSEPH F. RUGGIERO, CARLA M. KRIVAK, and CARL W.
WHITEHEAD, JR., *Administrative Patent Judges*.

WHITEHEAD, JR., *Administrative Patent Judge*.

ON REQUEST FOR REHEARING DECISION

Appellants have requested a rehearing of our decision wherein we affirmed the obviousness rejection of independent claims 1, 20, 23, 24, 28, 29, 30, and 31.¹

¹ “The Appellants have elected to appeal only the rejection of independent claims 1, 20, 23, 24, 28, 29, 30, and 31.” Appeal Brief 4.

Appellants argue the Decision mailed August 12, 2011, overlooked or misapprehended several particular points that lead to an incorrect finding of obviousness of the presently claimed invention and affirmation of the Examiner's rejection during prosecution. Request for Rehearing 2.

Appellants contend that although Chasin discloses "a confidence level of 90 to 95 percent or higher" such confidence level is merely given as an example of a confidence level and fails to disclose how such level is achieved. (*Id.*, at 3). Chasin discloses, "By applying filters in addition to the contact link processor to the e-mail message, the confidence ratio used for classifying a message as spam or junk can be increased to a relatively high value, e.g., approaching 100 percent." *See* Chasin [0011]. It is clear that Chasin does not provide the high confidence level as merely an example, as argued by the Appellants, and further, by employing filters; Chasin discloses how to achieve the high confidence level. Therefore we do not find the Appellants' arguments to be persuasive.

Appellants also contend that Chasin's disclosure of "no or few false positives" only describes the general state of the art. Request for Rehearing 4. We do not find the Appellants' argument to be persuasive because Chasin discloses at the beginning of paragraph [0011], "According to one aspect, the method, and corresponding system, of the present invention provides enhanced blocking of junk e-mail." Later in the same paragraph, Chasin discloses a method of how his invention achieves such a high confidence level as we indicated above. *See* Chasin [0011].

Appellants further contend that the claimed 'less than one percent' is a critical range as it addresses the deficiencies of existing filters and classification engines. Request for Rehearing 5. However, according to the

Appellants' Specification, the 'less than one percent' is only disclosed in a non-limiting example wherein "Of the messages that are determined to be either spam or non-spam, the probability of erroneous classification may be less than 1%." Specification 6. The criticality of the range is not readily apparent from the Specification and therefore we do not find the Appellants' arguments to be persuasive. Finally, as we stated in our Decision, the claimed range did not distinguish over Chasin's disclosure of "no or few false positives" and "confidence ratio approaching 100 percent." Decision 4.

Appellants' request for rehearing has been granted to the extent that our decision has been reconsidered, but such request is denied with respect to making any modifications to the decision.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a)(1)(iv).

REHEARING
DENIED

rwk